

REHEARING DEC 27 2005



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER

Chairman

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

KRISTIN K. MAYES

Commissioner

AZ CORP COMMISSION
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**IN THE MATTER OF
DISSEMINATION OF
INDIVIDUAL
CUSTOMER PROPRIETARY
NETWORK INFORMATION BY
TELECOMMUNICATIONS
CARRIERS**

) DOCKET NO. RT-00000J-02-0066
)
)
) **AT&T'S APPLICATION**
) **FOR REHEARING OF**
) **DECISION NO. 68292**
)
)

Pursuant to A.R.S. § 40-253 AT&T Communications of the Mountain States, Inc.
("AT&T") hereby applies for rehearing of Decision No. 68292, and alleges the following
grounds in support of the application.

1. Decision No. 68292 violates the First Amendment of the United States
Constitution and Article 2, section 6 of the Arizona Constitution by imposing what is
effectively an "opt-in approval" structure (nominally referred to as "opt-out approval
with verification") for the use and dissemination of Customer Proprietary Network
Information ("CPNI"). The verification requirement contained in rule 14-2-2108 is not a

narrowly tailored restriction on speech generated by a careful weighing of the costs and benefits attributed to the restriction.¹

2. Decision No. 68292 is unreasonable and contrary to law insofar as the record gathered by the Commission to support this rule-making clearly demonstrates that there has been no misuse of CPNI and no particular threatened harm to Arizona consumers. Simply alleging the possibility of access to information about customer telephone use is not sufficient justification for restricting commercial speech for it is not based on an identified harm. The Commission has not identified *any* misuse of CPNI in its various filings in this docket.

3. Decision No. 68292 is unreasonable and contrary to law insofar as it incorrectly requires a carrier to notify a customer that information concerning “received calls” is CPNI, rather than correctly informing consumers that CPNI belongs to the person making the call.

4. The Arizona Corporation Commission (“Commission”) has exceeded its constitutional and statutory authority in promulgating these rules restricting the use and dissemination of CPNI.

5. The Arizona CPNI rules adopted by Decision 68292 constitute an arbitrary and capricious interpretation of the controlling provisions of 47 U.S.C. § 222 and are impermissible because they violate the First Amendment of the United States

¹ AT&T incorporates here by reference the comments and objections to the proposed CPNI rules filed by AT&T dated May 14, 2004, and AT&T’s Comments on Staff’s Second Draft – Proposed CPNI Rules dated August 27, 2004.

Constitution and are preempted under 47 USC sec 222, and the Supremacy Clause, Article 6, clause 2 of the United States Constitution.

6. The following specific rules are unreasonable and/or contrary to law:
 - a. Arizona R14-2-2103 and R14-2-2104 because they conflict with or are more burdensome than the rights and obligations contained in 47 C.F.R. 2007(b)(1) & (2) as applied to a carrier sharing CPNI among agents, affiliates, joint venture partners and independent contractors.
 - b. Arizona R14-2-2104(E) as it requires a carrier to demonstrate that “opt-in approval” has been given, but sets no time limit for retaining and storing such records evidencing the approval. The FCC requires a carrier to keep records of approval for one year. 47 C.F.R. 94.2007(a)(3).
 - c. Arizona R14-2-2105(A)(8) insofar as it requires a carrier to post CPNI notice on the company web-site. This requirement is unnecessary and unreasonable because a carrier’s request to use CPNI must, by its nature and by rule, be directed to the individual consumer.
 - d. Arizona R14-2-2105(B) and (C) because they unreasonably require additional and extraordinarily costly mailings and/or electronic communications to customers that will directly and substantially increase costs to consumers affected by the rule-making. The Commission has shown no evidence of a corresponding benefit to consumers. The notice requirements contained in R14-2-2105(B) are inconsistent with and contrary to 47 C.F.R. 64.2008(c)(5) & (6) and 64.2008(d)(3)(iv).
 - e. R14-2-2103 & 2-2108 because the meaning and application of “opt-out approval” is contrary to and inconsistent with the meaning and application of 47 C.F.R. 64.2003(i).
 - f. R14-2-2109 as it unlawfully restricts commercial speech under the First Amendment of the United States Constitution and Article 2, section 6 of the Arizona Constitution and contradicts the opt-out approval mechanism permitted under the federal CPNI regulations.
 - g. R14-2-2110 imposes an annual customer notification requirement that will be an enormous burden for carriers because systems do not currently exist to produce annual reports on individual CPNI elections. R14-2-2110 does not allow this annual reminder to be included in the customer’s bill. No evidence in the record supports


this costly requirement and it will undoubtedly confuse customers who will very likely receive an annual reminder of their "opt-out approval" selection the same month they fall out of the opt-out approval category for failure to complete the verification. Once the year elapses, this "reminder" is inaccurate. This requirement contradicts the FCC's requirement that opt-out customers be reminded of their CPNI status every two years. 47 C.F.R. § 64.2008(d)(2).

- h. R14-2-2112 and R14-2-2008 are irreconcilable in application because opt-out approval does not remain in effect until the customer revokes or modifies or limits such approval if verification is not obtained within one year.

For the above reasons, AT&T requests that the Commission grant a rehearing with respect to Decision No. 68292 and that, upon rehearing, the Commission issue an order confirming the Commission's commitment to "adopt, incorporate and approve as its own" the federal CPNI rules in Arizona. 47 C.F.R. 64.2001 through 2009. That order would also withdraw the Arizona CPNI rules and would notify Arizona citizens that, after careful study and numerous public hearings, the Commission has concluded that Arizona citizens are well served by the current federal CPNI rules and that the Commission is available and prepared to enforce and apply those rules in Arizona to the full extent of its jurisdiction.

Dated this 5th day of December, 2005.

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CERTIFICATE OF SERVICE

I certify that the original and thirteen copies of **AT&T'S APPLICATION FOR REHEARING OF DECISION NO. 68292** in Docket No. RT-00000J-02-0066 were hand delivered on December 5, 2005, to:

Arizona Corporation Commission
Utilities Division – Docket Control
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and a true and correct copy was hand delivered on December 5, 2005, to:

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